

Decision **PROPOSED DECISION OF ALJ HYMES** (Mailed on 7/21/2014)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company (U39E) for Approval of Demand Response Programs, Pilots and Budgets for 2012-2014.

Application 11-03-001  
(Filed March 1, 2011)

And Related Matters.

Application 11-03-002  
Application 11-03-003**DECISION GRANTING COMPENSATION TO THE UTILITY CONSUMERS'  
ACTION NETWORK FOR SUBSTANTIAL CONTRIBUTION  
TO DECISION 12-04-045**

|   |   |
|---|---|
| <b>Claimant:</b> Utility Consumers' Action Network (UCAN) | For contribution to D.12-04-045             |
| <b>Claimed (\$):</b> \$70,132.49                          | <b>Awarded:</b> \$44,638.99 (reduced 36.4%) |
| <b>Assigned Commissioner:</b> Michael R. Peevey           | <b>Assigned ALJ:</b> Kelly A. Hymes         |

**PART I: PROCEDURAL ISSUES**

|  |  |
|--|--|
| <b>A. Brief Description of Decision:</b> | Adopts demand response activities and budgets for Pacific Gas and Electric, San Diego Gas & Electric, and Southern California Edison, allowing the utilities to conduct demand response programs, pilots, and associated activities for the years 2012-2014. |
|--|--|

**B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:**

|   | <b>Claimant</b> | <b>CPUC Verified</b> |
|---|-----------------|----------------------|
| <b>Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):</b> |                 |                      |
| 1. Date of Prehearing Conference (PHC):   | May 3, 2011     | Verified             |
| 2. Other Specified Date for NOI:  |                 |                      |
| 3. Date NOI Filed:  | June 1, 2011    | Verified             |

|  |                |               |
|--|----------------|---------------|
| 4. Was the NOI timely filed?   | Yes            |               |
| <b>Showing of customer or customer-related status (§ 1802(b)):</b>             |                |               |
| 5. Based on Administrative Law Judge (ALJ) ruling issued in proceeding number: |                |               |
| 6. Date of ALJ ruling:   |                |               |
| 7. Based on another CPUC determination (specify):                              | D.10-05-013    | Verified      |
| 8. Has the Claimant demonstrated customer or customer-related status?          | Yes            |               |
| <b>Showing of “significant financial hardship” (§ 1802(g)):</b>                |                |               |
| 9. Based on ALJ ruling issued in proceeding number:                            | D.10-05-013    |               |
| 10. Date of ALJ ruling:  | May 10, 2010   |               |
| 11. Based on another CPUC determination (specify):                             |                |               |
| 12. Has the Claimant demonstrated significant financial hardship?              | Yes            |               |
| <b>Timely request for compensation (§ 1804(c)):</b>                            |                |               |
| 13. Identify Final Decision:   | D.11-03-001    | D.12-04-045   |
| 14. Date of Issuance of Final Order or Decision:                               | April 30, 2012 | Correct       |
| 15. File date of compensation request:   | June 16, 2011  | June 27, 2012 |
| 16. Was the request for compensation timely?                                   | Yes            |               |

**PART II: SUBSTANTIAL CONTRIBUTION**

**A. In the fields below, describe in a concise manner Claimant’s contribution to the final decision (*see* § 1802(i), § 1803(a) & D.98-04-059).**

| Contribution   | Specific References to Claimant’s Presentations and to Decision  | Showing Accepted by CPUC |
|--|--|--------------------------|
| In this application, SDG&E is seeking \$4.4 million dollars to provide marketing, outreach and other educational aspects of PTR. UCAN opposes most, if not all, of this money for two reasons. First, UCAN submits that the \$28 million that SDG&E is seeking in A.10-07-009 can be leveraged to offer information about dynamic pricing and PTR to customers. Second, we believe this cost to be excessive; it will not be necessary to spend over \$4 per customer to alert them to a program that is purely voluntary and one in which | Only UCAN commented on utility Local DR Marketing budgets. UCAN opposes SDG&E’s funding request to market Peak Time Rebate. UCAN provides several examples where ME&O budgets are excessive. For example, UCAN considers the DR Local ME&O cost per customer to be excessive for a program in which a customer is automatically enrolled and participates voluntarily. UCAN argues that SDG&E should | Yes                      |

|  |  |            |
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| <p>customers need not take any action to enroll. All small customers are defaulted into the PTR program so the education is limited to informing customers of the opportunity to accrue summer savings.</p> <p>UCAN Opening Brief at 5-6</p>   | <p>leverage the requested \$28 million in its dynamic pricing application, A.10-07-009, to offer customers information about dynamic pricing and Peak time Rebate. Also, UCAN opposes SDG&amp;E's Customer Education, Awareness and Outreach Program, calling it overly broad and targeted at the wrong customers.</p> <p>In D.09-08-027, we approved a total of three marketing budget categories and encouraged the Utilities to coordinate, reduce, or eliminate program-specific budget requests in the 2012-2014 DR applications. We find that the ME&amp;O funding requests in the DR applications do not convey an adequate effort toward this policy.</p> <p>D.12-04-045 at 83-84.</p>   |            |
| <p>SDG&amp;E indicates that there are no synergies between the education program for dynamic pricing and demand response. Yet, under cross-examination, it turns out this assertion is not supported. As noted on the transcripts, the testimony of Mr. Katsufakis and that of SDG&amp;E Dynamic Pricing education witness bill Saxe were written contemporaneously. And as indicated in Exhibit. UCAN-4, the Dynamic Pricing witness conceded in his testimony that SDG&amp;E plans to leverage other outreach efforts....As acknowledged by SDG&amp;E's witness, SDG&amp;E has not incorporated any of those leveraged dollars in its proposal.</p> <p>UCAN Opening Brief at 9</p> | <p>Our review found instances where the Utilities could take advantage of coordination and integration. SCE requests \$20 million in marketing funds for Peak Time Rebate and SDG&amp;E requests \$3.8 million. For both utilities, this amount represents half of its total marketing request. UCAN recommends that SDG&amp;E use existing channels like email, direct mail and the SDG&amp;E website to market to potential Peak Time Rebate customers. Both SDG&amp;E and UCAN agree that once most customer email addresses are obtained, marketing costs should decrease.</p> <p>Instead of doubling marketing budgets to provide information about one program, the Utilities should focus residential and small commercial marketing efforts on motivating them to use the My Account tool as well as other available online resources. We reduce the marketing funds for these activities accordingly.</p> <p>D.12-04-045 at 90.</p> | <p>Yes</p> |

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| <p>SDG&amp;E has proposed a \$13.1 million program to offer enabling technologies at no cost for up to \$18,000 customers. At \$727.80 per customer, this is a very expensive program.</p> <p>UCAN proposed that the devices that SDG&amp;E provides to customers should be subsidized but do not require the kinds of significant subsidies envisioned by SDG&amp;E. Through cross examination, UCAN established that the kinds of devices to be sued by most customers will cost the utility between \$50-200.</p> <p>UCAN Opening Brief at 15-16</p>                                      | <p>UCAN initially raised concerns about the excessive cost of [SDG&amp;E's proposed Small Customer Technology Deployment] program, but no longer seemed concerned about the cost during evidentiary hearings, and instead proposed that SDG&amp;E use certain types of HAN devices.</p> <p>D.12-04-045 at 161.</p>  | Yes  |
| <p>UCAN recommends that no funds be provided for [SDG&amp;E's proposed Emerging Technologies program]. The basis for the recommendation is two-fold. First, UCAN believes that much of the program is duplicative of UCAN's proposed device testimony allocation of \$1.5 million that is part of the Customer Education effort, as discussed at page 13 above. Second, UCAN views this program as largely an in-house education slush fund by SDG&amp;E that duplicates much of the other funding SDG&amp;E is seeking for the large customer programs.</p> <p>UCAN Opening Brief at 17</p> | <p>We require the three utilities to provide semi-annual reports regarding their Emerging Technology projects. These reports shall summarize each project, the potential benefits of the technology or technique, the activities undertaken as part of the project, and provide any available data and results.</p> <p>D.12-04-025 at 145-146.</p>  | Yes  |
| <p>UCAN presented the testimony of William Marcus to highlight SDG&amp;E's failure to integrate its energy efficiency activities with demand response. He notes that SDG&amp;E's commitment to residential peak load reduction seems mild, at best and bases this conclusion on the company's slashing of energy efficiency programs with the greatest peak benefits and cutting spending from existing A/C demand response programs.</p> <p>UCAN Opening Brief at 18</p>  | <p>UCAN recommends that the Commission condense SDG&amp;E's Peak Time Rebate program. UCAN opposes most, if not all, of the \$4.4 million Peak Time Rebate budget requested by SDG&amp;E for two reasons. UCAN believes the cost is excessive and also asserts that the funding SDG&amp;E is seeking in a separate proceeding could be leveraged to educate customers about dynamic pricing and Peak Time Rebate to customers. (fn omitted).</p> <p>D.12-04-025 at 119.</p> | Yes, and also addressed in D.12-04-045 at 130. |

**B. Duplication of Effort (§§ 1801.3(f) & 1802.5):**

|  |                 |                      |
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|  | <b>Claimant</b> | <b>CPUC Verified</b> |
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| <b>a. Was the Office of Ratepayer Advocates (ORA)<sup>1</sup> a party to the proceeding?</b>   | Yes | Verified  |
| <b>b. Were there other parties to the proceeding with positions similar to yours?</b>  | Yes | Verified  |
| <b>c. If so, provide name of other parties:</b> The Utility Reform Network (TURN), Division of Ratepayer Advocates (DRA).  |     | Verified  |
| <b>d. Describe how you coordinated with ORA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</b><br><br>In order to avoid duplicative efforts, UCAN coordinated with DRA and TURN and focused its testimony upon the reasonableness of the SDG&E small customer demand response programs. |     | We make no reductions to UCAN's claim for unnecessary duplication of effort with other parties. |

### **PART III: REASONABLENESS OF REQUESTED COMPENSATION**

#### **A. General Claim of Reasonableness (§§ 1801 & 1806):**

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| <b>a. Concise explanation as to how the cost of Claimant's participation bears a reasonable relationship with benefits realized through participation:</b><br><br>UCAN's participation in this case and the final decision reached by the Commission provided a benefit for SDG&E ratepayers. The Commission considered UCAN's recommendations regarding Local DR Marketing Budgets (D.12-04-045 at 83-84, 87); coordination and integration of DR marketing efforts (D.12-04-045 at 90); SDG&E's Peak Time Rebate (D.12-04-045 at 119); and Small Customer Technology Deployment Program (D.12-04-045 at 161). UCAN's participation resulted in significant saving to ratepayers. | <b>CPUC Verified</b><br><br>It is reasonable to find that the costs of UCAN's participation bears a reasonable relationship with future benefits to customers which will exceed the amount awarded to UCAN by today's decision. We find that UCAN's participation in this proceeding will have direct benefits to SDG&E's customers. |
| <b>b. Reasonableness of Hours Claimed.</b><br><br>The hours claimed by UCAN are reasonable in light of UCAN's significant  | The hours claimed by UCAN are reasonable, but we adjust the  |

<sup>1</sup> The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.

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| contributions to the case and efforts to avoid duplicative work.  | hourly rate awarded to Shames, as discussed below.  |
| <b>c. Allocation of Hours by Issue</b> <ol style="list-style-type: none"> <li>1. General Preparation and Discovery</li> <li>2. Hearing Time</li> <li>3. SDG&amp;E Demand Response Programs</li> </ol> | UCAN provided a general breakdown of its hours according to broad general categories. This approach is acceptable for this proceeding but a more precise breakdown would be useful in the future. |

**B. Specific Claim:\***

| CLAIMED   |           |       |       |   |             | CPUC AWARD |          |             |
|---|-----------|-------|-------|---|-------------|------------|----------|-------------|
| ATTORNEY, EXPERT, AND ADVOCATE FEES   |           |       |       |   |             |            |          |             |
| Item  | Year      | Hours | Rate  | Basis for Rate*   | Total \$    | Hours      | Rate     | Total \$    |
| Michael Shames  | 2011      | 120.7 | \$535 | D.11-10-011, along with a fee increase as authorized by D.08-04-010 ( <i>see</i> Attachment 2)                | \$64,574.50 | 114.2      | \$330    | \$ 37,686   |
|   |           |       |       |   |             | 6.5        | \$365    | \$ 2,372.50 |
| William Marcus  | 2011      | 3.08  | \$250 | D.11-09-036   | \$770.00    | 3.08       | \$250    | \$770       |
|   | Subtotal: |       |       |   | \$65,344.50 | Subtotal:  |          | \$40,828.50 |
| OTHER FEES  |           |       |       |   |             |            |          |             |
| Describe here what OTHER HOURLY FEES you are Claiming (paralegal, travel **, etc.): |           |       |       |   |             |            |          |             |
| Item  | Year      | Hours | Rate  | Basis for Rate*   | Total \$    | Hours      | Rate     | Total \$    |
| Travel - Michael Shames   | 2011      | 11.5  | \$535 | Travel (1/2) - D.11-10-011, along with a fee increase as authorized by D.08-04-010 ( <i>see</i> Attachment 2) | \$3,076.25  | 11.5       | \$182.50 | \$ 2,098.75 |
|   | Subtotal: |       |       |   | \$3,076.25  | Subtotal:  |          | \$2,098.75  |

| <b>INTERVENOR COMPENSATION CLAIM PREPARATION **</b>   |  |                                       |  |                        |                 |                  |                       |                    |
|---|--|---------------------------------------|--|------------------------|-----------------|------------------|-----------------------|--------------------|
| <b>Item</b>   | <b>Year</b>                                | <b>Hours</b>                          | <b>Rate</b>  | <b>Basis for Rate*</b> | <b>Total \$</b> | <b>Hours</b>     | <b>Rate</b>           | <b>Total \$</b>    |
| Claim Preparation – David Pepper  | 2012                                       | 5.0                                   | \$200  | Attachment 3           | \$500.00        | 5.0              | \$100 – See Comment 4 | \$500              |
| <b>Subtotal:</b>  |  |                                       |  |                        | <b>\$500.00</b> | <b>Subtotal:</b> |                       | <b>\$500</b>       |
| <b>COSTS</b>  |  |                                       |  |                        |                 |                  |                       |                    |
| <b>#</b>  | <b>Item</b>                                | <b>Detail</b>                         | <b>Amount</b>  | <b>Amount</b>          |                 |                  |                       |                    |
| 1   | Michael Shames                             | Travel to hearings (see Attachment 7) | \$1,211.74   | \$1,211.74             |                 |                  |                       | \$1,211.74         |
| <b>Subtotal:</b>  |  |                                       | <b>\$1,211.74</b>  | <b>Subtotal:</b>       |                 |                  |                       | \$1,211.74         |
| <b>TOTAL REQUEST \$:</b>  |  |                                       | <b>\$70,132.49</b>   | <b>TOTAL AWARD \$:</b> |                 |                  |                       | <b>\$44,638.99</b> |
| <p>*We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant's records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p> <p>**Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.</p> |  |                                       |  |                        |                 |                  |                       |                    |
| <b>ATTORNEY INFORMATION</b>   |  |                                       |  |                        |                 |                  |                       |                    |
| <b>Attorney</b>   | <b>Date Admitted to CA BAR<sup>2</sup></b> | <b>Member Number</b>                  | <b>Actions Affecting Eligibility (Yes/No?)<br/>If "Yes", attach explanation</b>  |                        |                 |                  |                       |                    |
| Michael Shames  | June 3, 1983                               | 108582                                | No; please note from January 1, 1986 until January 15, 1987 and January 1, 1988 until October 5, 2011 Shames was an inactive member of the California State Bar. |                        |                 |                  |                       |                    |
| David Pepper  | June 2, 2010                               | 270479                                | No.  |                        |                 |                  |                       |                    |

**C. Attachments Documenting Specific Claim and Comments on Part III:**

| <b>Attachment or Comment #</b> | <b>Description/Comment</b> |
|--------------------------------|----------------------------|
| Attachment 1                   | Certificate of Service     |

<sup>2</sup> This information may be obtained through the State Bar of California's website at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch>.

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| Attachment 2 | Intervenor Compensation Rate for Michael Shames |
| Attachment 3 | Intervenor Compensation Rate for David Pfeffer  |
| Attachment 4 | Shames Hours                                    |
| Attachment 5 | Marcus Hours                                    |
| Attachment 6 | Pfeffer Hours                                   |
| Attachment 7 | Shames Travel Receipts                          |

**D. CPUC Disallowances and Adjustments:**

| #                                 | Reason   |
|-----------------------------------|--|
| 1. Hourly Rate for Michael Shames | <p>UCAN requests a merit-based hourly rate increase for Michael Shames (Shames) from his last-adopted rate of \$330 to a new rate of \$535. UCAN states that Shames has consistently billed at less than the maximum rate and that he should be compensated at a rate equivalent to lead attorneys with over 20 years of experience, such as Michel Florio and Robert Gnaizda.</p> <p>UCAN further contends that D.08-04-010 allows:</p> <p style="padding-left: 40px;">intervenor representative who has historically sought rates at the low end of an applicable rate range may request an increase within that range if the representative can clearly demonstrate in the compensation request that the representative’s previously adopted rate is significantly less than that of close peers (those with closely comparable training and experience and performing closely similar services.) Such requests will be judged on a case-by-case basis, but at a minimum must show the previously adopted rate of the peer(s) and must include a detailed description of the work involved to the degree that a comparison readily can be made. (D.08-04-010 at 9.)</p> <p>The UCAN request references Florio and Gnaizda as close peers to Shames. As we determined in D.13-11-016, “while the number of years that Shames has appeared before the CPUC is similar to both Florio and Gnaizda, Shames was performing work as an advocate between 1998 and 2011 while Florio and Gnaizda were performing work as attorneys. It is not accurate to claim that Shames did the same work warranting a similar rate as adopted for Florio and Gnaizda.” (D.13-11-016 at 8.)</p> <p>We make the same determination here. UCAN recognizes that Shames’ membership in the State Bar of California was inactive from 1998 through October 5, 2011. While Shames is now an active member of the State Bar of California, it is not appropriate to increase the hourly rate for this proceeding to the requested amount, since the vast majority of the advocacy work performed by Shames occurred prior to October 5, 2011. Consistent with D.13-11-016, we compensate Shames at \$330 as an advocate for his work prior to October 5, 2011 and at \$365 per hour for the work done after that date.</p> |



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| 2. Hourly compensation for travel for Shames | Travel to hearings is compensated at half the applicable rate and therefore will be compensated at \$182.50 per hour. It is reasonable to compensate UCAN's travel time and costs, since the travel is greater than 120 miles from UCAN's headquarters.  |
| 3. Hourly compensation for Marcus            | The hourly compensation claimed for Marcus is reasonable and is consistent with D.13-12-028 and D.13-09-022.   |
| 4. Hourly compensation for Pepper            | No previous compensation amount has been established for David Pepper. UCAN requests a rate of \$200 per hour, stating that Pepper has worked for UCAN as an attorney for two years, graduated from the University of California at Berkeley with high honors, and holds a law degree from the University of Michigan. Resolution ALJ-281 sets the compensation rate for attorneys with 0-2 years of experience at \$155-\$210 per hour for work performed in 2012. Pepper was admitted to the State Bar of California on 6/2/2010 and worked only on the intervenor compensation claim in this matter, which was filed on June 27, 2012. While UCAN has not described the type of work that Pepper has performed as an attorney, it is reasonable to establish a rate of \$200 per hour for 2012. |

**PART IV: OPPOSITIONS AND COMMENTS**

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| <b>A. Opposition: Did any party oppose the Claim?</b> | No |
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| <b>B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(2)(6))?</b> | No |
|--|----|

If not:

| <b>Party</b> | <b>Comment</b>          | <b>CPUC Disposition</b> |
|--------------|-------------------------|-------------------------|
|              | No comments were filed. |                         |
|              |                         |                         |

**FINDINGS OF FACT**

1. The Utility Consumers' Action Network has made a substantial contribution to Decision 12-04-045.

2. The requested hourly rates for the Utility Consumers' Action Network's representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.

3. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the work performed.

4. The total of reasonable compensation is \$44,638.99.

**CONCLUSION OF LAW**

The Claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code §§ 1801-1812.

**ORDER**

1. The Utility Consumers' Action Network is awarded \$44,638.99.

2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company shall pay the Utility Consumers' Action Network the total award. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning September 10, 2012, the 75th day after the filing of the Utility Consumers' Action Network's request and continuing until full payment is made.

3. The comment period for today's decision is not waived.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX****Compensation Decision Summary Information**

|                                  |                                  |                           |    |
|----------------------------------|----------------------------------|---------------------------|----|
| <b>Compensation Decision:</b>    |                                  | <b>Modifies Decision?</b> | No |
| <b>Contribution Decision(s):</b> | D1204045                         |                           |    |
| <b>Proceeding(s):</b>            | A1103001, A1103002, A1103003     |                           |    |
| <b>Author:</b>                   | ALJ Kelly Hymes                  |                           |    |
| <b>Payer(s):</b>                 | San Diego Gas & Electric Company |                           |    |

**Intervenor Information**

| <b>Intervenor</b>                        | <b>Claim Date</b> | <b>Amount Requested</b> | <b>Amount Awarded</b> | <b>Multiplier?</b> | <b>Reason Change/Disallowance</b> |
|--|-------------------|-------------------------|-----------------------|--------------------|-----------------------------------|
| Utility Consumers' Action Network (UCAN) | 6/27/12           | \$70,132.49             | \$44,638.99           | N/A                | Change in hourly rates.           |

**Advocate Information**

| <b>First Name</b> | <b>Last Name</b> | <b>Type</b> | <b>Intervenor</b> | <b>Hourly Fee Requested</b> | <b>Year Hourly Fee Requested</b> | <b>Hourly Fee Adopted</b> |
|-------------------|------------------|-------------|-------------------|-----------------------------|----------------------------------|---------------------------|
| Michael           | Shames           | Attorney    | UCAN              | \$535                       | 2011                             | \$330                     |
| Michael           | Shames           | Attorney    | UCAN              | \$535                       | 2011 (post 10/5/11)              | \$365                     |
| William           | Marcus           | Advocate    | UCAN              | \$250                       | 2011                             | \$250                     |
| David             | Peffer           | Attorney    | UCAN              | \$200                       | \$2012                           | \$200                     |

**(END OF APPENDIX)**